

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| ASAP Paging, Inc. |) | WC Docket No. 04-6 |
| |) | |
| Petition for Preemption of |) | |
| Public Utility Commission of Texas |) | |
| Concerning Retail Rating of Local |) | |
| Calls to CMRS Carriers |) | |

**COMMENTS OF
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

ASAP Paging, Inc. (ASAP) asks the Commission to preempt an order of the Public Utility Commission of Texas (Texas PUC) and certain provisions of Texas law and regulation relating to the routing and rating of calls.¹

ASAP offers paging and certain other services to customers in Texas. It uses numbering resources that appear to be within the local calling area of CenturyTel of San Marcos, Inc. (CenturyTel), but its switching facilities are actually located in Austin, Texas – normally a toll call from Century Tel’s San Marcos exchange.² As a result of this arrangement, customers in CenturyTel’s San Marcos area are able to place “local”

¹ ASAP Paging, Inc. Petition at 9 (Dec. 22, 2003) (*Petition*).

² ASAP also provides connection services to certain Internet Service Providers, also via its switch located in Austin. ASAP claims that it has installed a switch in the San Marcos area but that CenturyTel continues to impose toll charges on its customers.

calls to ASAP paging customers, but CenturyTel is apparently required to transport these calls to ASAP's Austin switch without compensation from ASAP.³

In 2002, CenturyTel programmed its switches so that end users seeking to call ASAP's customers must dial a 1+ prefix, and thereby incur toll charges. ASAP filed a complaint with the Texas PUC seeking to require CenturyTel to rate such calls based on comparisons of the three-digit "NXX" dialing prefix within the San Marcos local calling area (i.e., as local calls). The state commission found, however, that it was reasonable for CenturyTel to rate calls based on the physical location of ASAP's switch, rather than the NXXs.⁴ ASAP now asks the Commission to preempt the Texas PUC's decision.

The dispute at issue here involves questions about whether particular calls in and around the area of San Marcos, Texas should be considered "local" or "toll" for retail rating purposes. It appears that there is no basis for federal preemption of such inherently local rate regulation questions. ASAP's claims are, however, similar to those advanced by carriers in other federal proceedings seeking endorsement of "virtual NXX" arrangements for routing traffic. For example, the Commission is currently considering a petition filed by Sprint seeking a declaratory ruling that would require telephone companies to comply with carriers' requests to program switches to route traffic to NPA-

³ *Petition* at 13.

⁴ Complaint, Request for Expedited Ruling, Request for Interim Ruling, and Request for Emergency Action of ASAP Paging, Inc. Against CenturyTel of San Marcos, Inc., Public Commission of Texas, *Order*, PUC Docket No. 25673 (Oct. 9, 2003).

NXXs regardless of whether the numbering resources are located outside of the local rate center.⁵

NECA and other commenters in that proceeding voiced concerns about the use of such virtual NXX arrangements because they require carriers, including small LECs, to transport traffic to distant areas without compensation for the transport, termination, and switching costs incurred.⁶ CMRS carriers generally claimed in that proceeding, as ASAP does here, that they cannot justify the costs of obtaining direct interconnection with rural ILECs and that they should not be forced to conform wireless “local” calling areas to those applicable to wireline carriers. To the extent that the issues in ASAP’s petition involve questions falling within the interstate jurisdiction, NECA and OPASTCO believe the Commission should bear in mind that carriers such as CenturyTel incur costs for transporting traffic and are entitled to receive compensation for providing such services. ASAP understandably would like to offer customers in distant areas the ability to use its services at “free” local calling rates. But to enable such services, someone needs to build and maintain facilities to transport the traffic. If ILECs are not permitted to rate such calls as toll, they should clearly be permitted to obtain some form of compensation from ASAP and similarly situated carriers. Otherwise, ILECs will be forced to make

⁵ Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92, *Public Notice*, 17 FCC Rcd 13859 (2002).

⁶ See NECA Reply Comments, CC Docket No. 01-92 (Aug. 19, 2002). See also, Fred Williamson and Associates, Inc., Reply Comments, CC Docket No. 01-92 (Aug. 19, 2002); and Warinner, Gesinger & Associates, LLC Reply Comments, CC Docket No. 01-92 (Aug. 19, 2002). Similar concerns have also been raised (but not addressed) with respect to the Commission’s November Wireline-Wireless Portability Order. See Comment Sought on CTIA’s Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas, CC Docket No. 95-116, *Public Notice*, 18 FCC Rcd 832 (2003).

significant new investments in transport facilities, or incur transport costs from other carriers, with no mechanism to recover those costs other than increased charges to end-users.

Respectfully submitted,

March 23, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the NECA's Comments was served this 23rd day of March 2004, by electronic filing, or first class mail, to the persons listed below.

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